SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS.

Diwan Bahadur P. C. ETHIRAJULU NAYUDU :—" Mr. President, Sir, the resolution that stands in my name runs as follows :

> ' *That this Council recommends to the Government that effect be given from the* 1st *April* 1925 *to the proposals of the separation of the judicial and executive functions throughout the Presidency.*'

" Sir, I do not think that very many words are necessary from me to commend this resolution to the acceptance of the House."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" May I make a statement which might probably curtail discussion ? As a matter of fact, in obedience to the directions of the Government of India we have sent up our proposals and the discussion in this House relating to the separation of the judicial and executive functions. About four days ago knowing that the discussion on the resolution will be coming up now, the Government of India were asked whether they had come to any decision with regard to the matter and they have replied to say that they have not yet come to a decision ; but I understand that they will come to a speedy decision.

" I hope this statement will enable hon. Members not to make lengthy speeches."

Diwan Bahadur P. C. ETHIRAJULU NAYUDU :—" So far as I am concerned, the hon. the Law Member knows perfectly well that my speeches are not generally very lengthy."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" I do not at all mean to allude to any person or to any hon. Member nor do I make any complaint on that score. All that I am saying is that the gist of what is wanted may be embodied in speeches."

Diwan Bahadur P. C. ETHIRAJULU NAYUDU :—" Taking the suggestions that came from the hon. the Law Member as my cue, I shall try and finish what I have to say as briefly as possible.

" As I have been saying I believe only very few words are necessary from me, to commend this resolution to the acceptance of this House, for this is an old old, but none the less urgently needed, reform which had been urged upon the Government for over forty years by every public body but in vain. The arguments for the separation of the judicial and executive functions have been advanced *ad nauseam* for several years, but yet the unsympathetic Government has remained unmoved. In pursuance of a resolution passed by the last Legislative Council on 22nd September 1922, the Government was pleased to appoint a committee to consider the long agitated for question of the separation of judicial and executive functions, it is surprising that the Government have not yet come forward with their orders on the report submitted by the said Committee in April 1923. I trust sincerely that this Committee was not appointed by the Government as is usually the case with several other committees more with the object of yielding to the clamour than with the object of giving effect to any of the urgently needed reforms. The majority report, Sir, puts forward very simple suggestions with reference to this matter and as they explain, the cost involved in their suggestions is only between 2·5 lakhs and 3·75 lakhs. There is the report of my hon.

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Friend, Mr. Venkataramana Ayyangar, and the dissenting minute of the hon. Member, Mr. Ramalinga Chettiyar, which raise various other points. I am only anxious that the Government should take us into their confidence and let us know what they are going to do with reference to this much-needed reform. I desire that Government should give an opportunity for the Council to discuss the various recommendations of the Committee and come to certain conclusions on them at an early date. I think it is only fair that before final orders are passed by the Government this Council should have an opportunity of expressing its views thereon. I don't know, Sir, whether it will not be possible for the Government to bring in, by way of a resolution, their proposals on the subject, and get the decision of the House thereon. As I have said several months have already elapsed since the report was published and yet there is no sign of the Government coming forward with any orders thereon.

"There are certain recommendations contained in the majority report with which I radically disagree. The proposal that the appointment of Stationary Sub-Magistrates and First-Class Magistrates up to Rs. 600 should vest in the High Court is a proposal which I do not think the hon. the Law Member, especially after what he has heard during the last two days, would accept. Is it too much to expect, Sir, that the separation of judicial and executive functions will be given effect to at least from the next official year? This separation is highly necessary for a really effective advance towards self-government. The Imperial Government having conceded that greater autonomy should be given and that local bodies should be invested with greater powers, is it not fair at least now, when the reforms have been in force for sometime, to expect that one of the steps tending to the advancement of self-government should be granted, viz., the separation of judicial from executive functions. The reforms will be divested of much of their value unless this separation is given effect to, and the executive and judicial functions are placed in charge of responsible persons thoroughly independent in the discharge of their duties and free from that incubus of the present system which combines in the district executive officers magisterial powers, besides placing the police officers under them. I shall not detain the Council with a statement of all the various reasons which had been advanced times out of number in support of the plea of separation of judicial and executive functions. Suffice it to say the want of confidence in the administration has been the cause of anarchism. If the Government had yielded to public opinion and moved in this matter early, there would have been no occasion to pass emergency Ordinances. They would not have faced anarchism, rebellion and rioting in various places. The lack of confidence in the subordinate officials possessing both the judicial and executive functions is the sole cause of these troubles.

"An independent judiciary is the greatest safeguard of the constitution and it is the ultimate refuge of a subject's rights and liberties, and I therefore urge upon the Government in the name of Law and Order, which is one of their essential duties to maintain, to take early steps to have this urgent reform effected. My task in this matter has been made much easier by reason of the fact that the hon. Member in the Treasury Bench in charge of Law and Order had, even before he began to grace the floor of this House with his presence and fell a prey to the blandishments of his new born love in the Council Chamber, been advocating this reform from various platforms and I

am also aware, Sir, that one at least of the hon. the Ministers had not been lacking in his earnestness in appealing to the Government to have this much-needed reform effected.

"I would, therefore, suggest, Sir, and the suggestion has Parliamentary precedents behind it, that the hon. Law Member pass final and favourable orders on the report of the Committee appointed in pursuance of a resolution passed by this Council on 22nd September 1922. I wish he comes forward on the next official day with a list of resolutions on this subject and gets the opinion of the House thereon.

"With these words I commend the resolution standing in my name to the unanimous acceptance of this House."

* Mr. C. V. VENKATARAMANA AYYANGAR :—"Sir, I beg to second the proposition. And, taking the advice of the hon. the Law Member I shall not be very long in my speech. It has always been the peculiarity with the Treasury Bench . . ."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—"May I ask the hon. Member who moved the resolution whether he would insist on the date mentioned in the resolution, viz., 1st April 1925, remaining as it is; for, in that case I shall have to take a different attitude. But if he is willing to amend those words the matter is different."

Diwan Bahadur P. C. ETHIRAJULU NAYUDU :—"I have no objection to making an alteration, say, by fixing the date as not later than six months or three months."

* Mr. C. V. VENKATARAMANA AYYANGAR :—"If the hon. the Law Member will himself bring such an amendment we shall have no objection to it. As I was saying, ever since the reforms came in, the Treasury Bench has the peculiarity, whenever a question is asked, no matter however urgent, of saying that the matter is under consideration. We have had a number of occasions when the Treasury Benches resorted to this useful phrase. . ."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—"It is not a very useful phrase. The fact is, in deference to the wishes of this Council, I telegraphed about a week ago to the Government of India, and this telegram I have in my hands regarding the separation of the judicial and executive functions is the reply that I have received. It states:

'the question still under consideration. Home',

the last word meaning the Home Member who is in charge of it. The telegram was despatched on the 2nd and it reached us on the 3rd February."

* Mr. C. V. VENKATARAMANA AYYANGAR :—"I was coming to the fortunate position of the hon. the Law Member after dealing with the position of the Treasury Bench as a whole. They have always been closing our mouth, or at any rate attempting to close it by saying that the matter is under the consideration of the Government. Well, Sir, if the Limitation Act is to be of any use it is by way of amending it in one useful direction, viz., by enacting that no matter shall be under the consideration of the Local Government for more than such and such a period. That will be of some use to us. Otherwise matters will always be under consideration from year to year, from decade to decade and probably from century to century. I have to congratulate the hon. the Law Member that he is able to put off everything by saying that the matter is under his consideration, his sympathetic

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consideration ; and he has been always bringing to his rescue the statement that the matter is under the urgent consideration, sympathetic consideration, careful consideration of . . ."

* The hon. the PRESIDENT :—" I think it would facilitate matters if the hon. Member would say whether he accepts the resolution in the amended form."

*Mr. C. V. VENKATARAMANA AYYANGAR:—"As I have said already we shall cheerfully accept an amendment if the hon. Member will himself bring it."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" I am not in a position to accept any resolution ; because, I do not know what the conclusions of the Government of India will be. When they are still considering it I cannot very well say that I accept any particular resolution. I cannot really do that. All that I can say is, this is a reserved subject and the Right Hon. the Secretary of State and the Government of India are entitled to impose mandates upon us and their directions are binding upon us. All that I can say therefore is what I have said already about it."

* Mr. C. V. VENKATARAMANA AYYANGAR :—" Knowing that it would be so, I have said already that it is no use to us if the Government is going to say that the matter is under their mere consideration or even sympathetic consideration. It is absolutely useless to us. Because, when this matter came before us we had gone on with it and the matter is known to us and so far as the Council is concerned the resolution was passed in the Legislative Council, a committee was appointed and everything was done. But the Government, as in everything else, are moving slowly ; perhaps the Government wheel moves always slowly.

"In this matter, they moved much more slowly, and after long hesitation, the Committee was appointed. It consisted of several responsible officers and non-officials, and after a long time, again, in the Committee rooms, the report was drafted. It is after all a compromise report. Some of us wrote very elaborate and strong minutes of dissent. But we would be satisfied if reasonable beginnings were made. The report was placed before this House, and the House by a practically unanimous resolution, wanted that immediate steps should be taken on that report. We are now in a position—I do not know whether it is a fortunate position—of being told by the hon. the Law Member, not that this Government was going to consider the question—I speak subject to correction—but that the Secretary of State was going to consider the matter. This is a matter on which the Government has got some responsibility to the House apart from the fact that it belongs to reserved half. Of course, some steps must be taken by this House to force the Government to proceed with the matter instead of waiting for the opinion of the Government of India to be expressed. Unless we force this Government to do something tangible, there is no use. When I use the word 'force', I mean moral force ; the only force we can use on the reserved half, is by passing this resolution unanimously. The Treasury bench may not vote with us if we pass any resolution saying that this matter shall be brought up at once. There is no question of compromise here. If Government will not do that—I do not know if some of us will go so far—we will not sanction the grant under this head. But whatever it may be, whether we make speeches or not—we have made enough of speeches—we must clearly make the Government know our feeling in the matter and insist

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on this matter being brought as early as possible, the next earliest moment is when the new official year begins, because we know if the budget is passed and the Council passes the various grants, there will be no chance of this matter coming up for another year at least. They may take some more years or decades. Whether our friends non-co-operate or not at the time of the budget I strongly feel that this subject must be taken at the earliest opportunity, or else we will not sanction the particular grant. Of course, His Excellency, on the advice of the reserved half, might certify. But I do not think it will be necessary if we unanimously pass this resolution saying that we insist upon effect being given to this in 1st April 1925.

" After all, it is not a very difficult thing. The hon. the Law Member said some years ago—I do not mean the particular Law Member—I mean the officer who was in charge of the Law Department—that they were going to make a beginning, and they thought that a beginning was made by appointing two first-class magistrates. We were not satisfied with that. We do not know the persons who are responsible for the note prefacing the Committee's report. Whoever it may be, the Government in that note were prepared to go some steps in advance of the present stage. Now the Secretary of State and the Government of India have come to their rescue. They are not going to take any steps now. The reform is most urgent. These words of the Government of India that they are considering the matter will not take us one step further. Therefore I appeal to the House as a whole to pass this resolution unanimously and to show to the Government that if our resolutions were not treated with that consideration which we expect from Government we know how to retort, at least to some extent."

* The hon. Mr. C. P. Ramaswami Ayyar :—" Mr. President, I am afraid I have been very unsuccessful in my argument, judging from the reception that it has met at the hands of my hon. Friend, the Member from Coimbatore. A general discussion of the question was raised during the last budget meeting and the vote taken on the budget at that time was taken to indicate that the House had accepted the majority report of the Committee, including my friend from Coimbatore. Now, subsequent to that, the Government of India has begun to consider the topic as an all-India question. They have been considering it, and in order if possible to make a definite statement, as to any conclusion that the Government of India might have arrived at, either by approval or ratification of the report, either on the majority report or on the minority report, this Government telegraphed to the Government of India as to whether they have come to a decision. I, Sir, at an earlier stage of the report, read to the House the reply from the Government of India in which they say they are considering the subject. Now my hon. Friend from Coimbatore has stated that if no decision is arrived at and the scheme is not carried, he would advise his colleagues to non-co-operate throughout the budget season."

* Mr. C. V. Venkataramana Ayyangar :—" I said only one grant, i.e., Criminal Justice."

* The hon. Mr. C. P. Ramaswami Ayyar :—" That seems to be a drastic remedy and a somewhat cruel remedy so far as this Government is concerned. My hon. Friend knows this question is an all-India question and they have taken it and treated it as such. I take it that pressure will be exercised upon the Government of India and is being exercised in other quarters also. But

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consideration; and he has been always bringing to his rescue the statement that the matter is under the urgent consideration, sympathetic consideration, careful consideration of . . ."

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* Mr. C. V. VENKATARAMANA AYYANGAR :—"Knowing that it would be so, I have said already that it is no use to us if the Government is going to say that the matter is under their mere consideration or even sympathetic consideration. It is absolutely useless to us. Because, when this matter came before us we had gone on with it and the matter is known to us and so far as the Council is concerned the resolution was passed in the Legislative Council, a committee was appointed and everything was done. But the Government, as in everything else, are moving slowly; perhaps the Government wheel moves always slowly.

"In this matter, they moved much more slowly, and after long hesitation, the Committee was appointed. It consisted of several responsible officers and non-officials, and after a long time, again, in the Committee rooms, the report was drafted. It is after all a compromise report. Some of us wrote very elaborate and strong minutes of dissent. But we would be satisfied if reasonable beginnings were made. The report was placed before this House, and the House by a practically unanimous resolution, wanted that immediate steps should be taken on that report. We are now in a position—I do not know whether it is a fortunate position—of being told by the hon. the Law Member, not that this Government was going to consider the question—I speak subject to correction—but that the Secretary of State was going to consider the matter. This is a matter on which the Government has got some responsibility to the House apart from the fact that it belongs to reserved half. Of course, some steps must be taken by this House to force the Government to proceed with the matter instead of waiting for the opinion of the Government of India to be expressed. Unless we force this Government to do something tangible, there is no use. When I use the word 'force', I mean moral force; the only force we can use on the reserved half, is by passing this resolution unanimously. The Treasury bench may not vote with us if we pass any resolution saying that this matter shall be brought up at once. There is no question of compromise here. If Government will not do that—I do not know if some of us will go so far—we will not sanction the grant under this head. But whatever it may be, whether we make speeches or not—we have made enough of speeches—we must clearly make the Government know our feeling in the matter and insist

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the idea of the Mover seems to be to indicate the strong current of feeling that animates us, to precipitate the action of the Government of India and thereby also to precipitate a favourable consideration of the subject I think in that spirit, the hon. Mover has thought fit to bring this resolution, not to embarrass the Government of India but merely with a view to lay before that Government our feelings in the matter and the necessity for the matter being expedited and given effect to in the immediate future."

* Mr. A. Ramaswami Mudaliyar :—"I do not propose to occupy the Council very long on this question. I want to make some suggestions to the hon. the Law Member in connexion with this question. I have very little to say on the merits of the question, the separation of the judicial and executive functions.

"But I want to suggest that seeing that this is a very important question on which there is very strong feeling among all sections of the House and the public generally, any decision of the Government of India or of this Government should not be precipitated without giving an adequate opportunity for the House to express its own opinion thereon. I want to suggest this procedure which I see is very often adopted in the Assembly, but which I see is not adopted in this House. The Government of India moves resolutions in the Assembly expressing its views as regards what it is going to do on very vital questions and inviting discussion thereon in the Assembly so as to have the opinion of non-official members. Now, the hon. the Law Member says that this Government have come to some conclusions on this matter. What those conclusions are we are not aware of. The hon. the Law Member said that the majority of the House had given an indication of the fact that they are prepared to support the majority report. I am not quite sure of that. For I find that there are one or two points on which there is a very wide difference of opinion. We are in this position that we are absolutely in the dark as to whether the Local Government has accepted all the provisions of the majority report or only some of them, whether they have modified any of these proposals or whether they are in a position to make new proposals. Over and above that, we have the further difficulty that the Government of India might revise the proposals of the Local Government in their turn and modify them or alter them or cancel them. So that the final thing that will emerge from all these three authorities may have no relationship at all either with the report of my hon. Friend Mr. C. V. Venkataramana Ayyangar or even with the majority report. And, if that hybrid scheme or, if I may be permitted to say so, that mongrel scheme is going to be put forward as the scheme for the separation of judicial and executive functions, we will be in a very much worse position than when these two functions are conjointly working. If the hon. the Law Member will undertake, on behalf of the Government, to put forward in this House a series of resolutions from the Government Bench suggesting what course of action they are prepared to take in connexion with this scheme for the separation of judicial and executive functions either now or after they have received orders from the Government of India, I would propose, and my hon. Friend the Mover would accept, a small amendment to postpone the working of the scheme for separation till September 1925, or till any other reasonable date. I do not want him to say that after the Government of India have passed orders the matter has reached such a state of finality that no revision either by this House or at the instance of this House is possible. That is the

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difficulty that I feel. What is the stage at which this House can effectively intervene? What is the stage at which it can advise the Government so that the Government may take advantage of it? These are things with which I am not very well acquainted seeing that I have had nothing to do with them. I have had nothing to do with the administration as such, of judicial and executive functions."

* Mr. C. V. VENKATARAMANA AYYANGAR :—" I hope he will soon be in the Treasury Bench."

* Mr. A. RAMASWAMI MUDALIYAR :—" That is said at once."

* Mr. C. V. VENKATARAMANA AYYANGAR :—" I will be satisfied if my prophecy is fulfilled."

* Mr. A. RAMASWAMI MUDALIYAR :—" I am thankful to him. The hon. Member may be a better prophet than he is aware of. Now, these are our difficulties and I do request the hon. the Law Member to tell us that he will give us an opportunity for discussing these proposals."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" My only excuse for getting up at this moment is that what I am going to say might curtail discussion. This is a subject, Mr. President, which has engaged the earnest attention of publicists not only of this Presidency but throughout India for a long time. I take it that the orders of the Government of India on this subject will not form a cut and dry scheme which will apply to all provinces, but will only be the enunciation of certain principles and an attempt to elucidate public opinion Whatever it be, if it is at all possible—and our hands are not definitely tied by the Government of India to a different course—I undertake to place any communiqué or anything that is received by the Government of India before this House and that this Government will not move in the matter before this House has had an opportunity to consider all the aspects of the resolution or communiqué of the Government of India."

Diwan Bahadur P. C. ETHIRAJULU NAYUDU :—" After the promise made by the hon. the Law Member I do not think I shall be advised in pressing my motion. I beg to withdraw it."

The motion was by leave withdrawn.

The House then adjourned for lunch (1-36 p.m.).

## After Lunch 2-30 p.m.

II—*cont.*

MOTION FOR THE ADJOURNMENT OF THE BUSINESS OF THE HOUSE TO DISCUSS THE RIGOROUS COLLECTION OF LAND REVENUE IN THE TANJORE DISTRICT.

* Mr. S. MUTTAYYA MUDALIYAR :—" Mr. President, Sir, I beg to move the adjournment of the business of the Council to consider an urgent matter of public importance, namely, the situation created in the Tanjore district by the rigorous collection of the enhanced land revenue even from lands that have not been cultivated, before any orders have been passed on the remission applications, and even in spite of the present famine-stricken condition of the district when a large extent of land is uncultivated and the yield of the cultivated lands is very much below the normal.

" It is natural that to begin with, the attention of hon. Members of this House should be directed to some of the aspects which are implied in the